

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Health
Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

QUALITY CARE SERVICES, INC.
And PEGGY HARRIS
Petitioners,

v.

LAWRENCE BROWN
Respondent

Case No.: C-00-80004

**ORDER GRANTING IN PART AND DENYING IN PART
RESPONDENT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE,
FOR AN EMERGENCY EVIDENTIARY HEARING**

This case arises under D.C. Code Title 32, Chapter 14, the Nursing Home and Community Residence Facilities Protections Act of 1985 ("Protections Act").¹ Yesterday, March 15, 2000, the Office of Adjudication and Hearings received an emergency motion² submitted by respondent, Lawrence Brown, through his counsel. The motion identified Respondent as a resident of a Community Residence Facility ("CRF") owned and/or operated by Petitioners Quality Care Services, Inc. and Peggy Harris. Respondent's motion indicates that Petitioners have given him a notice of intent to involuntarily discharge him from his CRF pursuant to D.C. Code §§ 32-1431 - 32-1436, and that such discharge is scheduled to occur tomorrow, March 17, 2000. Respondent requests that the administrative court dismiss the discharge notice for defects in service, or alternatively, that the administrative court hold an

¹ The Office of Adjudication and Hearings has jurisdiction over this matter pursuant to Reorganization Plan No. 4 of 1996, Mayor's Order No. 97-42, Mayor's Order No. 99-68 and Department of Health Organizational Order No. 99-24.

² Although styled somewhat informally, Respondent's submission seeks particularized relief that is within the administrative court's jurisdiction and will therefore be treated as a motion.

emergency evidentiary hearing to determine whether the Respondent's proposed discharge is permitted under the requirements of the Protections Act. As explained below, based on the limited record available³, and because there is no evidence that the discharge notice was served in conformity with the requirements of the Protections Act, Petitioners notice of involuntary discharge will be dismissed without prejudice.

The Protections Act mandates extensive procedures designed to ensure that the vulnerable people who live in nursing homes and community residence facilities are not subjected to the hardships of an involuntary discharge in the absence of adequate notice and an opportunity to obtain counsel and effectively challenge the discharge on its merits. These procedures include a requirement of oral and written notice for the resident, and timely service of the written notice to the Mayor's designee, the Office of the Long Term Care Ombudsman, in some cases, the Department of Human Services. *See* D.C. Code § 32-1432.

Respondent asserts that his proposed involuntary discharge scheduled for March 17, 2000 was not made known to the Long Term Care Ombudsman until March 10, 2000. That period of notice is insufficient under D.C. Code § 32-1432, and indeed, would frustrate the very purpose of the Protections Act by impairing Respondent's ability to timely obtain counsel through the Long Term Care Ombudsman, to have that counsel timely request a hearing, and to allow that counsel to prepare for and represent respondent at that hearing. *See* D.C. Code §§ 32-1432 – 32-1433.

³ An *ex parte* emergency hearing was held on Respondent's motion at approximately 5:00 P.M. on March 16, 2000. During that hearing, Respondent's counsel recited the extensive steps he had undertaken in attempting to notify Petitioner of the emergency hearing. The administrative court, however, will not consider counsel's representations in that hearing and will rely solely on the written record in determining the pending motion.

In the limited time since receiving the Respondent's emergency motion, the Clerk of the Office of Adjudication and Hearings attempted twice to contact Petitioners so that they would have an opportunity to respond, either orally or in writing, before the Court rendered its decision on an emergency basis. Both calls were made during normal business hours but yielded only an answering machine. The Clerk left a message that was not returned. Moreover, the burden of proof on the adequacy of service falls on Petitioners in this case, since it is their service that is being challenged. *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A.* 51 F.3d 1383, 1387 (8th Cir. 1995); *Mylan Labs. v. Akzo, N.V.*, 2 F.3d 56, 59-60 (4th Cir. 1993). *See also* SCR-Civ. 12(b)(5).

Therefore, upon Respondent's Emergency Motion to Dismiss, or in the Alternative for an Emergency Hearing, and the entire record in this case, it is hereby, this _____ day of _____, 2000:

ORDERED, that the petition to involuntarily discharge Respondent from his Community Residence Facility is dismissed for failure to prove proper service of statutory notice pursuant to D.C. Code § 32-1432; and it is further

ORDERED, THAT PETITIONERS, QUALITY CARE SERVICES, INC. AND PEGGY HARRIS, AND ALL PERSONS ACTING ON THEIR BEHALF, ARE ORDERED TO CEASE AND DESIST FROM ANY ACTION TO REMOVE OR DISCHARGE RESPONDENT LAWRENCE BROWN FROM HIS COMMUNITY RESIDENCE FACILITY; AND IT IS FURTHER

ORDERED, that Petitioners may submit proof of proper service of statutory notice and seek reconsideration of this Order, or may issue and properly serve a new involuntary discharge notice in conformity with D.C. Code § 32-1432, and other applicable law; and it is further

ORDERED, that the Department of Health shall attempt to hand deliver and shall conspicuously post a copy of this Order on the premises of the Community Residence Facility in which the Respondent Lawrence Brown resides; and it is further

ORDERED, that all further hearing requests, notices, memoranda and other documents in this matter be filed with the administrative court pursuant to the guidelines on the enclosed “Case Filing and Service Procedures.”

/s/ **3/16/00**

Paul Klein
Chief Administrative Law Judge